

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Duisenberg	Patent Application	
Application No.:	10/072,358	Group Art Unit:	2181
Filed:	02/06/2002	Examiner:	Lee, Chun Kuan
For:	METHOD AND APPARATUS FOR SYNCHRONIZING A SOFTWARE BUFFER INDEX WITH AN UNKNOWN HARDWARE BUFFER INDEX		

REPLY BRIEF

Appellant respectfully submits the following remarks in response to the Examiner's Answer, which was mailed on March 18, 2008.

REMARKS

Appellant respectfully submits the following remarks in response to the Examiner's Answer. In these remarks, Appellant addresses certain arguments presented in the Examiner's Answer. While only certain arguments are addressed in this Reply Brief, this should not be construed to mean that Appellant agrees with the other arguments presented in the Examiner's Answer.

(§9) Grounds of Rejection: page 5 and 6 of Examiner's Answer

The Appellant notes that the Examiner's Answer has apparently added material to expand the explanation regarding the Rejection's interpretation of "Lounsbury" et al. (U.S. Patent 4,637,023) in the rejection of Claims 1, 10, and 16. This added material appears in lines 14-21 of page 5 and lines 5-8 of page 6. In this added material the Examiner's Answer apparently restates some of Appellant's claim language, which is also interspersed with interpretations in light of Lounsbury. In particular, the Examiner's Answer persists in correlating the concepts of valid data and invalid data of Lounsbury with the terms "processed data" and "unprocessed data" as recited in Appellant's claims (see e.g., Claims 1, 10, and 16). Appellant respectfully maintains that Lounsbury's checking for valid data (as recited) is very different from checking for processed data or unprocessed data as recited. See e.g., page 11, lines 4-5 of Appellant's Appeal Brief.

Moreover, Appellant indicated on page 11, lines 17-20 of Appellant's Appeal Brief that no explanation was provided in the Rejection as to why the differences (and overcoming them)

between the claimed feature and the combination of AAPA and Lounsbury would have been obvious to one of ordinary skill the art. This added material may be some attempt to address that deficiency. However, per Appellant's understanding this added material adds no clarification to the Grounds of Rejection and does nothing to remedy the noted deficiency. Instead, Appellant submits that even with this added material, the Rejection still fails to explain to why the differences (and overcoming them) between the claimed feature and the combination of AAPA and Lounsbury would have been obvious to one of ordinary skill the art.

(§10) Response to Argument: page 11 - page 14 of Examiner's Answer

With reference to the concept of *prima facie* obviousness, MPEP 2142 (Edition 8, Revision 6) indicates that, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the Appellant is under no obligation to submit evidence of nonobviousness,” (emphasis added). MPEP 2142 (Edition 8, Revision 6) further indicates with respect to obviousness, that:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). ... With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. (emphasis added, missing citations in original)

With respect to Issue 1 in the Response to Arguments Section, Appellant submits that the point of Appellant's argument appears to have been missed. Appellant did not argue that Lounsbury was non-analogous art, but rather that the Rejection's Lounsburys' valid data and the recited "processed data" were not analogous, and that Lounsbury's invalid data and the recited "unprocessed data" were not analogous. Instead, Appellant argued, and respectfully maintains, that Lounsbury's checking for valid data (as recited) is very different from checking for processed data or unprocessed data as recited. Further, Appellant submits that nothing in the Rejection or in the Examiner's Answer explains why these very concepts should be construed as the same, instead, only conclusory statements are provided which indicate that these concepts are being considered equivalent. (see, e.g., Examiner's Answer, page 12, lines 8-10 which indicates: "Additionally, examiner is relying on Lounsbury's valid data for the teaching/suggesting of appellant's processed data and Lounsbury's invalid data for the teaching/suggesting of appellant's unprocessed data..." emphasis in original)

With respect to Issue 2, Appellant submits that the Examiner's Answer has misconstrued the content and point of Appellant's argument. Appellant is not arguing that neither AAPA nor Lounsbury teaches a buffer index. While Lounsbury does not show this feature, AAPA does. However, per the Rejection and the Examiner's Answer (see e.g., page 4, line 17 - page 5, line 5 of the Examiner's Answer), it has been conceded that:

AAPA does not teach...if there is said second buffer with unprocessed data, synchronizing said software buffer index to a hardware buffer index by resetting said software buffer index to a next available buffer having processed data following said second buffer, and otherwise stopping said searching when each buffer of said plurality of buffers has been searched and a buffer with unprocessed data is not found.

Appellant submits that the above quotation is essentially a restatement of the claim language of, “if there is said second buffer with unprocessed data, resetting said software buffer index to a next available buffer having processed data following said second buffer,” as recited in Claims 1, 10, and 16. Appellant argues that this feature is not taught/suggested by AAPA, that no “buffer index,” “processed data,” or “unprocessed data” is taught/suggested by Lounsbury, and that no explanation is provided by the Rejection as to why these differences (and overcoming them) between the cited art and the claimed feature would have been obvious to one of skill in the art at the time, and that therefore this claim feature is not rendered obvious.

With respect to Issue 3, Appellant respectfully maintains the argument that the proposed combination of AAPA and Lounsbury would impermissibly change the principle of operation of AAPA (see page 12, line 1 - page 13, line 8 of the Appellant’s Appeal Brief). “Ascertaining the differences between the claimed invention and the prior art requires interpreting the claim language and considering both the invention and the prior art as a whole.” see e.g., MPEP 2141(II)(B) and MPEP 2141.02. As such, Appellant submits that the cited art must be considered as a whole, and that it is improper to only rely on certain portions of a piece of art while ignoring other portions which would be detrimental to a proposed position. However, from the language of the Examiner’s Response, it appears that portions of the Lounsbury art may not be being fully considered (see Examiner’s Answer, page 13, lines 4-16).

CONCLUSION

For reasons presented above and for reasons previously presented in the Appeal Brief, Appellant continues to assert that the embodiments of Claims 1-24 are not taught suggested or described by the cited art. Thus, Appellant respectfully requests that the rejections of Claims 1-24 be reversed.

Appellant encourages the Examiner or a member of the Board of Patent Appeals to telephone the Appellant's undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,

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Dated: 05/19/2008

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